

# PATENT COOPERATION TREATY

# PCT

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## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 2002CH014	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/IB 03/06147	International filing date ( <i>day/month/year</i> ) 18.12.2003	Priority date ( <i>day/month/year</i> ) 20.12.2002
International Patent Classification (IPC) or both national classification and IPC C09B67/22		
Applicant CLARIANT INTERNATIONAL LTD et al.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 5 sheets, including this cover sheet.  
  
☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).  
  
 These annexes consist of a total of    sheets.

3. This report contains indications relating to the following items:
  - I    ☒ Basis of the opinion
  - II   ☐ Priority
  - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
  - IV   ☐ Lack of unity of invention
  - V    ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
  - VI   ☐ Certain documents cited
  - VII ☐ Certain defects in the international application
  - VIII ☐ Certain observations on the international application

Date of submission of the demand  15.07.2004	Date of completion of this report  14.01.2005
Name and mailing address of the international preliminary examining authority:   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer  Ousset, J-B  Telephone No. +49 89 2399-8271  

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**I. Basis of the report**

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

**Description, Pages**

1-14 as originally filed

**Claims, Numbers**

1-7 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).  
☐ the language of publication of the international application (under Rule 48.3(b)).  
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.  
☐ filed together with the international application in computer readable form.  
☐ furnished subsequently to this Authority in written form.  
☐ furnished subsequently to this Authority in computer readable form.  
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.  
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:  
☐ the claims, Nos.:  
☐ the drawings, sheets:

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

*(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*

6. Additional observations, if necessary:

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**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Yes: Claims	1-7
	No: Claims	
Inventive step (IS)	Yes: Claims	
	No: Claims	1-7
Industrial applicability (IA)	Yes: Claims	1-7
	No: Claims	

**2. Citations and explanations**

**see separate sheet**

**SECTION V**

1). Relevant prior art is represented by:

- D1: EP-A-0 347 685 (BAYER AG) 27 December 1989 (1989-12-27)
- D2: GB-A-2 346 150 (CIBA SC HOLDING AG) 2 August 2000 (2000-08-02)
- D3: DE 43 04 744 A (BASF AG) 18 August 1994 (1994-08-18)
- D4: EP-A-0 678 560 (NIPPON KAYAKU KK) 25 October 1995 (1995-10-25)
- D5: WO 00/43454 A (BUCKLEY ALAN JOHN ;WHITHAM CHRISTOPHER (GB);  
YORKSHIRE CHEMICALS P) 27 July 2000 (2000-07-27)

2). The claimed matter is novel vis-à-vis D2 mainly because of the nature of the groups  $R_{10}$  and  $R_{11}$  attached to the nitrogen atom of the compounds of formula (2). This also applies for D3.

Novelty is also acknowledged vis-à-vis D4 and D1, due to the presence of an amido group in the formula of the compound of type (1) in these documents;  $R_4$  cannot be an amido group for the claimed compounds.

The currently claimed mixture is a selection over D5 (see claims 11 and 8; compounds (VI) and (VII)). However, this selection is regarded as novel vis-à-vis D5, since D5 does not mention explicitly the mixture of (VI) and (VII).

3). D5 relates also to dye mixtures used to treat polyester fibres and represents therefore the closest prior art.

Hence, the provision of an alternative dye mixture starting from D5 is obvious for the skilled person, since he knows from the teaching of this document, that such a mixture can dye polyester fibres.

The problem underlying the current application appears to be the provision of further dye mixtures having an unexpected effect over the prior art.

In view of the content of the description, this problem has not been solved.

If it is intended to submit comparative tests in response to this communication, the comparative mixture should be the one of D5 containing the dyes (VI) and (VII).

Moreover, if an unexpected effect can be demonstrated, then it should be made credible on the whole claimed scope. In other words, the applicant is asked to explain

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for which reasons, the skilled person would expect that the unexpected effect is credibly present in view of the different claimed variations.

4). There is no objection with regard to industrial applicability.